

Exhibit II

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**STEPHANIE CAPSOLAS, HERNAN RICARDO
ALVARADO, JEFFREY CUTAIAR, NICOLE
MEDVITZ, PAUL TORO, DANIEL JANSON,
ROGER CARO, CHRIS ELL, CHRIS FORBES,
JESSE PATRICK, and DIANA DIETRICH, on behalf
of themselves and other similarly situated,**

Plaintiffs,

v.

**PASTA RESOURCES INC., BABBO LLC d/b/a
BABBO RISTORANTE ENOTECA, PANE SARDO
LLC d/b/a OTTO ENOTECA PIZZERIA, EL MONO
LLC d/b/a CASA MONO and BAR JAMON, LA
LOGGIA LLC d/b/a TARRY LODGE, MARIO
BATALI, and JOSEPH BASTIANICH,**

Defendants.

**DECLARATION OF
PAUL TORO**

I, Paul Toro, declare, upon personal knowledge and under penalty of perjury, pursuant to 28 U.S.C. Section 1746, that the following is true and correct:

1. I worked for Tarry Lodge as a bartender from approximately October 2008 through the present.
2. During my entire tenure at Tarry Lodge, I was paid hourly wages of less than the full minimum wage rate.

NOTICE OF THE TIP CREDIT

3. Throughout my employment, nobody at Tarry Lodge ever informed me about the federal law regarding the tip credit at any time during my employment. Nobody at Tarry Lodge ever told me that I would be paid less than the minimum wage because I would receive tips or that my tips would be used as a credit against the minimum wage that Tarry Lodge was required to pay me.

TIP SHARING

4. During my employment at Tarry Lodge, I was not allowed to retain all of the tips that I earned.

5. The restaurant kept a portion of the customer tips that I and other tipped food service workers earned. The amount that the restaurant kept was equal to approximately 4% of the wine sales for the shift.

6. Specifically, the restaurant calculated 4% of the wine sales attributable to each bartender and/or server, and took that percentage out of each bartender/server's tips. With the remainder, we in turn, tipped out a percentage of our tips to other service employees, such as barbacks and runners.

7. I know this because I saw the tip sheet, which showed this distribution.

8. Upon inquiry, Nancy Selzer, partner/owner, informed me that the company's policy at all Batali restaurants was that 4% of each night's wine sales is deducted from the service employees' tips and goes to the "house."

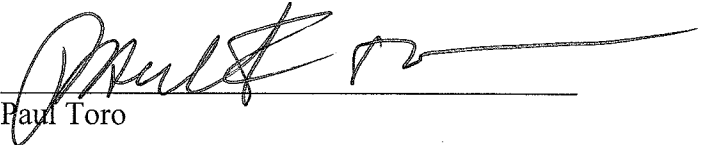
9. On another occasion, Ms. Selzer stated that the 4% went to cover the restaurant's expenses related to wine research.

10. I was informed by sommeliers Chase (last name unknown) and Meng (last name unknown) that they are paid a fixed salary each week, regardless of the amount of money withheld on account of the wine sales, and that the 4% of wine sales withheld from our tips are not distributed to sommeliers.

MANAGEMENT RESPONSE TO THE LAWSUIT

11. After this lawsuit was filed, Defendant Joseph Bastianich approached me at the restaurant, shook my hand, and stated sarcastically, "congratulations on the lawsuit." This occurred at the bar in front of several coworkers.

Dated: New York, New York
August 30, 2010


Paul Toro